FOR ARGUMENT

Supreme Court, U.S.
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In the Supreme Court of the United States

OCTOBER TERM, 1978

No. 78-5705

OTIS TRAMMEL, JR.,
Petitioner,

vs.

UNITED STATES OF AMERICA,
Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

BRIEF AMICUS CURIAE

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BRIEF FOR THE AMICUS CURIAE THE MISSOURI BAR

OPINION BELOW

The opinion of the Court of Appeals is reported at 583 F.2d 1166. There was no reported opinion at the District Court level.

JURISDICTION

Jurisdiction of this Court was invoked by Petitioner under 28 U.S.C. § 1254(1) and Rule 19 of Rules of the Supreme Court of the United States and on February 26, 1979, this Court granted certiorari.

QUESTION PRESENTED

The Petition for Writ of Certiorari presented the question:

> "Is it reversible error to permit a wife to testify against her husband over his objection and without his consent?"

STATEMENT

The Petitioner was convicted of unlawfully importing heroin and conspiracy to unlawfully import heroin. The government's case against Petitioner was based on the testimony of his wife. The government granted use immunity to the wife in the usual manner. The Petitioner made timely, repeated, adequate objection to the use of his wife as a witness against him, and her testimony, as a violation of marital privilege. On appeal, the 10th Circuit held in the opinion below that *Hawkins v. United States*, 358 U.S. 74 (1958) was not controlling and that the Petitioner was not entitled to the marital testimonial privilege. Petitioner sought certiorari in this Court, which was granted.

SUMMARY OF ARGUMENT

The Missouri Bar joins and concurs fully in the brief *Amicus Curiae* of the Michigan Bar Standing Committee.

ARGUMENT

The Consent of All Parties to the Filing of This Brief Has Been Obtained. The Missouri Bar Joins and Concurs Fully in the Brief *Amicus Curiae* of the Michigan Bar Standing Committee.

The Missouri Bar, with the consent of all parties, joins their brothers of the Michigan Bar to resist the threat to evidentiary privileges and privacy posed by the practices seen in this case and the theories advanced to support them by the Court of Appeals below. The destruction of the anti-spouse pitting privilege would damage the family and society beyond any possible need or benefit of government. Beyond that, if the justifications and reasons advanced to thus shatter the seal of silence upon the relationship of husband and wife are upheld, how can the newer and less basic relationships of lawyer and client or clergyman and parishioner withstand them?

For these reasons, The Missouri Bar joins the Amicus Michigan Bar Committee in urging the re-affirmation of the settled rule of *Hawkins v. United States*, 358 U.S. 74 (1958).

Respectfully submitted,

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